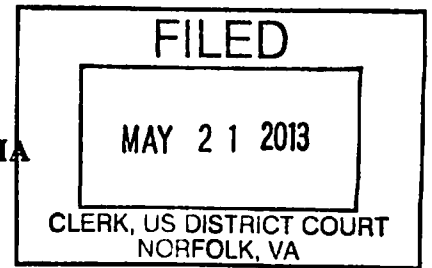


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division



RUDOLPH LEWIS DUDLEY, JR.,

Plaintiff,

v.

4:12CV174

**CAROLYN W. COLVIN,
Commissioner of Social Security,**

Defendant.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Pro se Plaintiff, Rudolph Lewis Dudley, Jr. ("Dudley" or "Plaintiff"), brought this action under 42 U.S.C. §§ 1383(c)(3) and 405(g) seeking judicial review of the decision of the Commissioner of the Social Security Administration ("SSA" or "Defendant") denying his claim for disability benefits. By order filed February 8, 2013, this action was referred to the undersigned United States Magistrate Judge pursuant to the provisions of 28 U.S.C. §§ 636(b)(1)(B) and (C), and Rule 72(b) of the Federal Rules of Civil Procedure. (ECF No. 9).

I. PROCEDURAL BACKGROUND

On November 9, 2012, Dudley filed a Motion for Leave to Proceed In Forma Pauperis, along with a copy of a Complaint against SSA appealing its denial of Dudley's claim for disability benefits. (ECF No. 1). On November 29, 2012, Dudley filed an Amended Motion for Leave to Proceed In Forma Pauperis. (ECF No. 2). The Court granted Dudley's Motion for Leave to Proceed In Forma Pauperis on November 30, 2012 and ordered his Complaint be filed and served. (ECF No. 3). On February 7, 2013, SSA filed its Answer to the Complaint (ECF No. 7).

By Order entered February 11, 2013, the Court set out a briefing schedule in which Dudley was directed to file a Motion for Summary Judgment with memorandum supporting his contentions and containing a statement of undisputed facts by March 13, 2013. (ECF No. 10). Dudley failed to file a Motion for Summary Judgment, or otherwise respond to the Court's direction, by the deadline date, and on March 28, 2013 the Defendant moved to have the case dismissed for lack of prosecution, or in the alternative grant an extension within which to file its Motion for Summary Judgment, along with supporting memorandum. (ECF Nos. 11-13). In accordance with Roseboro v. Dudley, 528 F.2d 309 (4th Cir. 1975), Dudley was given an opportunity to respond to Defendant's Motion to Dismiss with any material that he wished to offer in rebuttal. (ECF No. 13). Dudley was advised that failure to submit any materials could result in an adverse judgment based on Defendant's motion.

Because Dudley had failed to respond to the Court's briefing order, on April 19, 2013, the Court issued a Show Cause Order directing Dudley to show cause why his Complaint should not be dismissed for failure to prosecute or to comply with the Rules and Order of the Court. (ECF No. 14). On April 30, 2013, the Court received and filed Dudley's response to the Show Cause Order, in which he requested an extension of time to comply with the Court's prior direction. (ECF No. 15).

The Court granted Dudley's request for an extension and directed him to file a Motion for Summary Judgment with memorandum supporting his contentions and containing a statement of undisputed facts as described in Local Rule 56(b) by May 16, 2013. (ECF No. 16). As of the date of this Report an Recommendation Dudley has failed to file a Motion for Summary Judgment or otherwise respond to the Court's direction and the time for doing so has now expired.

II. ANALYSIS

In the motion presently before the Court, Defendant requests that Dudley's claim be dismissed pursuant to Federal Rule of Civil Procedure 41(b), which provides that a defendant may move for an involuntary dismissal when a plaintiff fails to prosecute or comply with a court order. Fed. R. Civ. P. 41(b). As stated above, Plaintiff was initially ordered to file a motion for summary judgment on or before March 13, 2013. Plaintiff was thereafter granted an extension of time in which to file his motion on or before May 16, 2013. Despite being given two opportunities and despite being put on notice that Defendant was moving for dismissal of the action due to Plaintiff's failure to file his motion for summary judgment, Plaintiff failed to file a motion for summary judgment as directed. Other than requesting extensions, Plaintiff has filed nothing substantive with the Court since his initial Complaint. Plaintiff has failed to comply with multiple orders of this Court, and otherwise failed to prosecute the case.

III. RECOMMENDATION

For the foregoing reasons, the undersigned recommends that the Defendant's Motion to Dismiss be GRANTED and the instant action be DISMISSED pursuant to Federal Rule of Civil Procedure 41(b).

IV. REVIEW PROCEDURE

By copy of this Report and Recommendation, the parties are notified that pursuant to 28 U.S.C. § 636(b)(1)(C):

1. Any party may serve upon the other party and file with the Clerk written objections to the foregoing findings and recommendations within fourteen (14) days from the date of mailing of this report to the objecting party, 28 U.S.C. § 636(b)(1)(C), computed pursuant to Rule 6(a) of the

Federal Rules of Civil Procedure. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof.

2. A district judge shall make a de novo determination of those portions of this report or specified findings or recommendations to which objection is made.

The parties are further notified that failure to file timely objections to the findings and recommendations set forth above will result in waiver of right to appeal from a judgment of this court based on such findings and recommendations. Thomas v. Arn, 474 U.S. 140 (1985); Carr v. Hutto, 737 F.2d 433 (4th Cir. 1984), cert. denied, 474 U.S. 1019 (1985); United States v. Schronce, 727 F.2d 91 (4th Cir.), cert. denied, 467 U.S. 1208 (1984).

/s/ [Signature]
Douglas E. Miller
United States Magistrate Judge

Douglas E. Miller
United States Magistrate Judge

Norfolk, Virginia

May 21, 2013

Clerk's Mailing Certificate

A copy of the foregoing Report and Recommendation was mailed this date to each of the following:

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Norfolk, VA 23510

Fernando Galindo, Clerk

By A. Galindo
Deputy Clerk
5/21, 2013